



windelsmarx.com
156 West 56th Street | New York, NY 10019
T. 212.237.1000 | F. 212.262.1215

Kim M. Longo
212.237.1050
klongo@windelsmarx.com

December 8, 2022

VIA ECF

Honorable Cecelia G. Morris
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 627
New York, New York 10004-1408

Re: *Picard v. Zephyros Limited*, Adv. Pro. No. 12-01278 (substantively consolidated with *SIPC v. Bernard L. Madoff Investment Securities LLC*, Adv. Pro. No. 08-01789)

Dear Judge Morris:

We are special counsel to Irving H. Picard, trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act and the chapter 7 estate of Bernard L. Madoff, in the above-referenced adversary proceeding. We write jointly with counsel for the defendant, Zephyros Limited (“Zephyros”), with respect to the hearing on Zephyros’ motion to dismiss (ECF No. 129) scheduled for December 14, 2022 at 10:00 a.m. (ECF No. 131).

The parties write to provide the Court notice that they have conferred and agree to limit their respective arguments at the hearing to only the third and fourth grounds for dismissal raised by Zephyros in its accompanying memorandum of law, i.e., that (i) 11 U.S.C. § 546(e) bars recovery of the bulk of the Trustee’s claims,¹ and (ii) the statute of limitations bars recovery of the newly alleged transfer in the Amended Complaint from Rye Select Broad Market Portfolio Limited (*f/k/a* American Masters Broad Market Fund II Limited) to Zephyros.² The parties have agreed to rest on their papers with respect to all other issues. Nothing herein shall be considered a waiver of any argument made in the parties’ filed papers or otherwise affect those arguments in any way.

¹ ECF No. 130 at 12-19; *see also* ECF No. 134 (Trustee’s Opposition) at 13-25; ECF No. 136 (Zephyros’ Reply) at 10-16.

² ECF No. 130 at 19-22; *see also* ECF No. 134 (Trustee’s Opposition) at 25-30; ECF No. 136 (Zephyros’ Reply) at 16-19.

Respectfully submitted,

**WINDELS MARX LANE &
MITTENDORF, LLP**

By: /s/ Kim M. Longo
Robert J. Luddy
Kim M. Longo
Alex Jonatowski
156 West 56th Street
New York, New York 10019
Telephone: (212) 237-1000
rluddy@windelsmarx.com
klongo@windelsmarx.com
ajonatowski@windelsmarx.com

*Special Counsel to Irving H. Picard, Trustee
for the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff
Investment Securities LLC and the
Chapter 7 Estate of Bernard L. Madoff*

O'MELVENY & MYERS LLP

By: /s/ Daniel S. Shamah
William J. Sushon
Daniel S. Shamah
Kayla Haran
7 Times Square
New York, New York 10036
Telephone: (212) 326-2000
wsushon@omm.com
dshamah@omm.com
kharan@omm.com

Attorneys for Defendant Zephyros Limited